SUPREME COURT OF THE UNITED STATES.

No. 117.

KNOX, BOGGS & COMPANY, APPELLANTS,

vs.

PEYTON SMITH AND OTHERS.

ON APPEAL FROM THE CIRCUIT COURT U. S. DISTRICT OF WEST TENNESSEE.

INDEX.

	Original.	Print.
Bill, original	1	2
Bond, prosecution	4	5
Bond, delivery	11	13
Bryan's answer	21	23
Boon, Jos. G., answer	27	29
Bond, appeal	39	41
Collier, P. P., answer	18	19
Chester, Ro. J., testimony	31	33
Clarkson, R., testimony	32	34
Declaration at law	4	5
Demurrer	13	15
Deed of trust	33	35
Decree of State court	37	39
Decree of federal court	39	41
Execution at law	10	11
Execution, *alias*	12	13
Exhibit to Horne's answer	26	28
Feezor, Henry, answer	21	23
Horne, Josiah, answer	24	26
Harris, Jno. W., deposition	31	34
Judgment at law	9	11
Protests	7, 8, 9	8, 9, 10
Record of the judgment at law	3	4
Replication	30	32
Summons at law	4	4
Smith, Frederick R., answer	14	16
Smith, Peyton, answer	15	17
Smith, Alex. W., testimony	31	34
Testimony	30	32
Testimony of complainants	30	32
Testimony of defendants	33	35

J. & G. S GIDEON, printers.

United States of America, ss.

Pleas at a term of the circuit court of the United States, in the eighth circuit, for the district of West Tennessee, begun and held at the court house, in the town of Jackson, on the second Monday in the month of October, *anno domini* one thousand eight hundred and forty-three.

Present, and holding said court, the honorable John Catron, an associate justice of the Supreme Court of the United States.

Be it remembered, that on the 8th day of April, 1841, a bill in chancery was filed in the clerk's office of said court, in the words and figures, to wit:

Bill.

To the honorable Morgan W. Brown, judge of the district court of the United States for the district of West Tennessee, now holding at Jackson.

Humbly complaining shew unto your honor your orators, John Knox, James Boggs and James A. Knox, citizens of the State of Pennsylvania, and late merchants in company, under the firm and style of Knox, Boggs & Co., that on the 8th day of April, 1840, your orators recovered a judgment in your honorable court, at Jackson, against Thomas Eckford and Probert P. Collier, citizens of the State of Tennessee, for the sum of three thousand four hundred and sixty-two dollars and twenty cents damages, and costs of suit taxed at thirty-four $\frac{30}{100}$ dollars; upon which execution issued on the 24th of April, 1840, directed to the marshal of the district of West Tennessee, and came to his hands on the same day; and on the 25th of April was levied on, a gray horse and sulkey, the property of Probert P. Collier, which was afterwards sold for the sum of two hundred and five dollars; and afterwards, on or about the 18th of July, 1840, the said marshal levied the execution upon seventeen negroes, to wit: negro Jack, valued at $500; James, valued at $350; Washington, at $150; Zilphy, at $300; Margaret, at $150; Doll, at $400; Maralla, at $150; Bryan, at $300; Toney, at $150; Catharine, at $150; Cicely, at $400; Cloey, at $150; Phillis, at $350; Cinthia, at $150; Sam, at $150; John, at $150; Lucinda, $150; 4 mules, valued at $200, the property of the said P. P. Collier: and the said marshal took a delivery bond for the forthcoming of said negroes and mules on the 21st day of September, 1840, signed and sealed by said P. P. Collier and Needham Bryan, Henry Feezer and Frederic R. Smith, as his securities, all of whom are citizens of the State of Tennessee.

And your orators further shew, that before the day of sale appointed by the marshal upon said execution, one Peyton Smith, a citizen of the State of Tennessee, pretending to claim said property levied upon, by virtue of some fraudulent deed of trust, executed by Probert P. Collier to him, the said Peyton, filed a bill in this honorable court, addressed to

your honor, praying an injunction to restrain said sale, and applied to your honor for an injunction; and after notice was given to your orators of said application, the question was argued before your honor by counsel, for the said Peyton Smith, and by counsel for your orators, and your honor decided that the application for the injunction should not be granted; and the delivery bond being forfeited, an alias execution issued from this honorable court in favor of your orators, against said Thomas Eckford, Probert P. Collier and his securities in the delivery bond before mentioned, on the 27th October, 1840, which came to hand same day, and by the marshal was levied upon the same seventeen negroes before levied on, valued at $4,250, and four mules, valued at $200; and a bond was taken by the marshal for the delivery of said property in the town of Covington, on the 5th December, 1840; which bond was executed by the said P. P. Collier and his securities in the first bond, and Joseph G. Boon as security, the 6th November, 1840; and upon this last execution the marshal made the following return:—"The property "executed delivered according to bond, and then arrested from me by "the sheriff of Tipton, under order of the chancery court at Browns-"ville, 5th Dec'r, 1840." All which will more fully and at large appear by reference to the records, papers and files remaining in this honorable court.

And your orators further shew, that the said Peyton Smith, although your honor refused to grant an injunction restraining the sale of said negroes levied upon, has, by some means or other, procured from the State courts of the State of Tennessee, a process of injunction, or some other process, enjoining the sale of said negroes and property levied upon by virtue of the executions issuing from your honorable court, and has procured one Josiah Horne, the sheriff of Tipton county, a citizen of the State of Tennessee, to arrest and take possession of said negroes from the custody of the marshal of this court; and the said Josiah Horne has still possession of said property so levied upon as aforesaid, and refuses to deliver the same to the marshal of the western district, to be sold according to law.

Your orators further shew, that said negroes and mules were the property of said Probert P. Collier, and liable to be sold for the debt due to your orators, and that the State courts had no right, power, or jurisdiction to enjoin the process issued from this honorable court; and your orators believe, and so charge, that the said Collier and the securities upon said delivery bond, combined and confederated with said Peyton Smith to prevent the sale of the property levied upon, and so defeat the execution of your orators, and your orators have now no adequate and complete remedy at law.

In consideration of the premises, your orators pray that the said Peyton Smith, Thomas Eckford, Probert P. Collier, Needham Bryan, Henry Feezer and Frederic R. Smith, Joseph G. Boon and Josiah Horne, all citizens of the State of Tennessee, may be made defendants to this bill, and true answer make, upon oath, as if the same were here again repeated, and they thereto more particularly interrogated; and

may it please your honor to decree that the negroes, hereinbefore mentioned, be sold to pay the judgment due to your orators, and that said defendants be jointly and severally bound, personally, to pay said judgment and interest to your orators, and that said negroes be forthcoming, to abide by the decree of this honorable court; and that your orators may have such other and further relief as is consistent with equity.

May it please your honour to order writs of subpœna to issue, directed, &c., commanding, &c., and also writs of injunction, enjoining said defendants, and each of them, from removing said negroes until the further order of this court.

FOSTER & FOGG, &
RO. C. BRINKLEY, *Solicitors.*

An exhibit of the judgment at law.

United States of America, ss.

At a term of the district court of the United States, in the eighth circuit for the district of West Tennesse, begun and held at the court house, in the town of Jackson, on the first Monday in the month of April, *anno domini* one thousand eight hundred and forty.

Present, and holding said court, the honorable Morgan W. Brown, judge of the district courts of Tennessee.

Be it remembered, that on the 4th day of December, 1839, a summons was issued from the clerk's office of said court, in the words and figures, to wit:

Summons.

The President of the United States of America, to the marshal of the district of West Tennessee, greeting:

You are hereby commanded to summon Thomas Eckford and Probert P. Collier, citizens of the State of Tennessee, if to be found [L. S.] within your district, to appear before the judge of the district court of the United States, in the eighth circuit for the district of West Tennessee, at Jackson, on the first Monday in April next, and then and there to answer John Knox, James Boggs and James A. Knox, citizens of the State of Pennsylvania, and late merchants in partnership under the firm and style of Knox, Boggs & Co., of a plea of trespass on the case, to their damage five thousand dollars. Herein fail not, and have you then and there this writ.

Witness, Morgan W. Brown, esq., judge of the district courts of Tennessee, this first Monday in October, in the year 1839, and of the independence of the United States the sixty-fourth year.

JAS. L. TALBOT, *clerk of said court.*

Endorsements and Returns.

And afterwards, said writ was returned to the clerk's office aforesaid, with the following endorsements:

"Issued 4th Dec'r, 1839. Came to hand same day issued."

ROB. J. CHESTER, *M. W. T.*

"Josiah Deloache is authorized to execute this writ on Thomas Eckford.

Witness my hand and seal, this 10th day of December, 1839.

ROB. J. CHESTER, *Marshal, West Tenn.*"

"Executed on Thomas Eckford, 26th day of December, 1839.

JOSIAH DELOACHE, *Sp'l dep. marshal.*"

"Frederic R. Smith is authorized to execute this writ on Probert P. Collier.

Witness my hand and seal, this 17th February, 1840.

ROB. J. CHESTER, *Marshal, West Tenn.*"

"Executed on Probert P. Collier, and delivered him a copy of the declaration at same time, this 20th day of February, 1840.

FRED. R. SMITH, *Sp'l dep. mar.*"

Pros. bond.

Know all men by these presents, that I, Robert C. Brinkley, am held and firmly bound unto Thomas Eckford and Probert P. Collier, in the sum of five hundred dollars; to be void on condition that John Knox, James Boggs, and James A. *Boggs*, do pay and satisfy all costs that may accrue in their behalf in the prosecution of a suit this day commenced by them in the district court of the United States, for the district of West Tennessee, at Jackson, against said Eckford and Collier, on failure of the plaintiffs to prosecute their suit with effect.

Witness my hand and seal, this 4th day of December, 1839.

Signed R. C. BRINKLEY, [SEAL.]

Declaration.

And at the April term, 1840, of said court, the plaintiffs filed the following declaration, to wit:

UNITED STATES OF AMERICA,
District of West Tennessee:

District federal court, April term, A. D. 1840.

John Knox, James Boggs, and James A. Knox, citizens of the State of Pennsylvania, one of the United States of America, late merchants and partners, trading under the firm and style of Knox, Boggs & Co., by attorney, complain of Thomas Eckford and Probert P. Collier, citizens of the State of Tennessee, who have been summoned, &c., of a plea of trespass on the case, on promises, &c.

For that, whereas certain individuals, styling themselves McCorcle and Holmes, on the 13th day of September, in the year of our Lord 1838, at Covington, Tennessee, to wit, in the district of West Tennessee, made their promissory note, in writing, the date whereof is the day and year aforesaid, and thereby promised to pay, five months after the date thereof, which period has elapsed, to the order of Probert P. Collier, thirteen hundred and seventy-one dollars and ninety cents, negotiable and payable at the Branch of the Union Bank of Tennessee, at Jackson,

Tennessee, for value received, and then and there delivered the said note to the said Probert P. Collier; and the said Probert P. Collier then and there endorsed the same to the defendant Thomas Eckford; and the defendant, Thomas Eckford, then and there endorsed the same to the plaintiffs; which promissory note, with the said endorsements, is here to the court shewn; and the said McCorcle & Holmes, or the said Probert P. Collier, or any other person, did not pay the amount of the said promissory note, or any part thereof, when the same fell due, nor at any time before or afterwards; although the said note was duly presented at the Branch of the Union Bank of Tennessee, at Jackson, Tennessee, where the same was made payable, and payment thereof duly demanded when the said note became due; whereupon, the same was duly protested for non-payment; of all which the said defendants then and there had due notice; by means whereof the said defendants then and there became liable to pay the said plaintiffs the said sum of money in the said promissory note specified; and being so liable, they, the said defendants in consideration thereof, afterwards, to wit, on the day and year last aforesaid, at, to wit, in the district of West Tennessee aforesaid, undertook, and then and there faithfully promised the said plaintiffs, to pay them the said sum of money in the said promissory note specified.

And whereas, also, J. D. Frierson & Co., on the 13th day of September, in the year of our Lord 1838, at Covington, Tennessee, to wit, in the district of West Tennessee, made their certain promissory note in writing, the date whereof is the day and year aforesaid, and thereby promised to pay, five months after date, which period has elapsed, to the order of Probate P. Collier, (alias Probert P. Collier,) one thousand and one dollars and seventy-four cents, negotiable and payable at the Branch of the Union Bank of Tennessee, at Jackson, Tennessee, for value received, and then and [there] delivered the said note to the said Probert P. Collier, to whose order the same was made payable by the name of Probate P. Collier, by mistake for Probert P. Collier; and the said Probert P. Collier then and there endorsed the same to the defendant Thomas Eckford; and the defendant Thomas Eckford then and there endorsed the same to the plaintiffs; which said promissory note, with the said endorsements, is here to the court shewn; and the said J. D. Frierson & Co., or the said Probert P. Collier, or any other person, did not pay the amount of the said promissory note, or any part thereof to the plaintiffs, or any one else, when the said note became due, or at any time before or afterwards, although the said promissory note was duly presented at the said Branch of the Union Bank of Tennessee, at Jackson, Tennessee, where the same was made payable, and payment thereof duly demanded when the same became due; and whereupon, the said note was then and there duly protested for non-payment; of all which the said defendants then and there had due notice.

By means whereof, the said defendants then and there became liable to pay the said plaintiffs the said sum of money in the said promissory note specified; and being so liable, they, the said defendants, in consideration thereof, afterwards, to wit, on the day and year last mentioned, to wit, in the district of West Tennessee aforesaid, undertook, and then

and there faithfully promised the said plaintiffs, to pay them the said sum of money in the said promissory note specified.

And whereas, also, J. D. Holmes & Co., on the 13th day of September, in the year of our Lord 1838, at Covington, Tennessee, to wit, in the district of West Tennessee, made their certain promissory note, in writing, bearing date the day and year aforesaid, and thereby promised to pay, five months after date, which period has elapsed, to the order of Probate P. Collier, (alias Probert P. Collier,) eight hundred and fifty-nine dollars, negotiable and payable at the Branch of the Union Bank of Tennessee, at Jackson, Tennessee, for value received; and then and there delivered the said promissory note to the said Probert P. Collier, to whose order the same was made payable by the name of Probate P. Collier, by mistake for Probert P. Collier; and the said Probert P. Collier, to whose order the same was made payable, then and there endorsed the said promissory note to the said defendant Thomas Eckford; and the said defendant Thomas Eckford then and there endorsed the same to the plaintiffs; which promissory note, with the said endorsements, is here to the court shewn. And the said J. D. Holmes & Co., or the said Probert P. Collier, or any person else, did not pay the amount of the said promissory note, or any part thereof, when the same became due, nor at any time before or afterwards, although the said promissory note was duly presented at the said Branch of the Union Bank of Tennessee, at Jackson, Tennessee, where the same was made payable, and payment thereof duly demanded, when the said note became due; and whereupon, the same was duly protested for non-payment; of all which the said defendants then and there had due notice. By means whereof, the said defendants then and there became liable to pay the plaintiffs the said sum of money, in the said promissory note specified; and being so liable, they, the said defendants, in consideration of the premises, afterwards, to wit, on the day and year last aforesaid, at, to wit, in the district of West Tennessee aforesaid, undertook, and then and there faithfully, promised the said plaintiffs, to pay them the said sum of money in the said promissory note specified. And the said plaintiffs aver, that they are now, and were at the commencement of this suit, citizens of the State of Pennsylvania; and that the defendants are now, and were at the commencement of this suit, citizens of the State of Tennessee.

Nevertheless, the said defendants not regarding their said several promises and undertakings, but contriving and fraudulently intending craftily and subtly to deceive and defraud the said plaintiffs in this behalf, have not, as yet, paid the said several sums of money, or any, or either of them, or any part thereof, to the said plaintiffs, although often requested so to do. But the said defendants, to pay the said plaintiffs the same, have hitherto wholly neglected and refused, and still do neglect and refuse, to the damage of the said plaintiffs of five thousand dollars; and therefore they sue.

R. C. BRINKLEY,
Attorney for plaintiffs.

Protest.

UNITED STATES OF AMERICA,

State of Tennessee, Madison county:

Be it known, that on the day of the date hereof, I, M. Cartmell, notary public for the county of Madison, in the State of Tennessee, duly commissioned and sworn according to law, residing in the town of Jackson, in said State, at the request of the president, directors, and company of the Union Bank of the State of Tennessee, holders of the original promissory note, whereof a true copy is on the other side written, demanded payment thereof at the office of discount and deposit of the said Bank at Jackson, where the same was made payable, from Jno. W. Campbell, cas. thereof, and was answered by said cas. that no provision had been made at said office for the payment of said note.

Whereupon, I, the said notary, at the request aforesaid, have and do hereby solemnly protest against the drawer of the said promissory note, the endorsers, and all others concerned, for all exchange, re-exchange, costs, damages, and interest already suffered, and to be suffered, for want of payment thereof.

Thus done and protested at Jackson aforesaid, this 16th day of February, one thousand eight hundred and thirty-nine. In testimony whereof, I have hereunto set my hand, and affixed my notarial seal, the day and year above written.

[L. S.] MARTIN CARTMELL,
Notary public.

COVINGTON, TENNESSEE, *September 13th*, 1838.

$1,371 90.

Five months after date, we promise to pay to the order of Probert P. Collier thirteen hundred and seventy-one dollars and ninety cents, negotiable and payable at the Branch of the Union Bank of Tennessee at Jackson, Tennessee, for value received.

McCORKLE & HOLMES,
Covington, Tenn.

Endorsed by PROBERT P. COLLIER,
Covington.

THOS. ECKFORD,
Covington.

JAS. A. KNOX, *Atto.*

JNO. SOMMERVILLE.

I do hereby certify that I, this day, deposited notices in the post office at Jackson, Ten., enclosed to John Sommerville, cash., Nashville, Ten., directed to himself and Jas. A. Knox, and directed to the other endorsers and the makers, Covington, Ten.

Given under my hand and seal, this 16th Feb., 1839.

JULIUS JOHNSON. [L. S.]

Protest.

UNITED STATES OF AMERICA,
State of Tennessee, Madison county:

Be it known, that on the day of the date hereof, I, M. Cartmell, notary public for the county of Madison, in the State of Tennessee, duly commissioned and sworn according to law, residing in the town of Jackson, in said State, at the request of the president, directors, and company of the Union Bank of the State of Tennessee, holders of the original promissory note, whereof a true copy is on the other side written, demanded payment thereof at the office of discount and deposit of said bank at Jackson, where the same was made payable, from Jno. W. Campbell, cas. thereof, and was answered by said cas. that no provision had been made at said office for the payment of said note.

Whereupon, I, the said notary, at the request aforesaid, have and do hereby solemnly protest against the drawers of the said promissory note, the endorsers, and all others concerned, for all exchange, re-exchange, costs, damages, and interest already suffered and to be suffered, for want of payment thereof.

Thus done and protested at Jackson aforesaid, this 16th day of February, one thousand eight hundred and thirty-nine. In testimony whereof, I have hereunto set my hand, and affixed my notarial seal, the day and year above written.

[L. S.] MARTIN CARTMELL,
Notary public.

COVINGTON, TENNESSEE, *September* 13*th*, 1838.

$1,001 74.

Five months after date, we promise to pay to the order of Probate P. Collier, one thousand and one dollars and seventy-four cents, negotiable and payable at the Branch of the Union Bank of Tennessee at Jackson, Tennessee, for value received.

J. D. FRIERSON & CO.,
Covington, Ten.

Endorsed by PROBERT P. COLLIER,
Covington, Ten.
THOS. ECKFORD,
Covington.
JAS. A. KNOX, *Atto.*
JNO. SOMMERVILLE, *Cash.*

I do hereby certify that I, this day, deposited notices in the post office at Jackson, Ten., enclosed to John Sommerville, cash., Nashville, Ten., directed to himself and Jas. A. Knox, and directed to the other endorsers and the makers, Covington, Ten.

Given under my hand and seal, this 16th Feb., 1839.

JULIUS JOHNSON. [L. S.]

Protest.

UNITED STATES OF AMERICA,

State of Tennessee, Madison county:

Be it known, that on the day of the date hereof, I, M. Cartmell, notary public for the county of Madison, in the State of Tennessee, duly commissioned and sworn according to law, residing in the town of Jackson, in said State, at the request of the president, directors, and company of the Union Bank of the State of Tennessee, holders of the original promissory note, whereof a true copy is on the other side written, demanded payment thereof at the office of discount and deposite of the said bank at Jackson, where the same was made payable, from Jno. W. Campbell, cash. thereof, and was answered by said cashier, that no provision had been made at said office for the payment of said note.

Whereupon I, the said notary, at the request aforesaid, have and do hereby solemnly protest against the drawers of the said promissory note, the endorsers and all others concerned, for all exchange, re-exchange, costs, damages, and interest, already suffered and to be suffered, for want of payment thereof.

Thus done and protested at Jackson, aforesaid, this 16th day of February, one thousand eight hundred and thirty-nine. In testimony whereof, I have hereunto set my hand, and affixed my notarial seal, the day and year above written.

[L. S.] MARTIN CARTMELL,
Notary public.

COVINGTON, TENNESSEE, *September 13th*, 1838.

$859 00.

Five months after date, we promise to pay to the order of Probate P. Collier, eight hundred and fifty-nine dollars, negotiable and payable at the branch of the Union Bank of Tennessee, at Jackson, Tennessee, for value received.

J. D. HOLMES & CO.,
Covington, Ten.

Endorsed by PROBERT P. COLLIER,
Covington.
THOS. ECKFORD,
Covington.
JAS. A. KNOX, *Atto.*
A. PATTON.

I do hereby certify that I, this day, deposited notices in the post office at Jackson, Ten., directed to the makers, and the two first endorsers, Covington, Ten., and to Jas. A. Knox, Nashville, Tenn.; also delivered a notice to A. Patton in person.

Given under my hand and seal, this 16th Feb., 1839.

JULIUS JOHNSON. [L. S.]

Judgment.

And now, on this day, to wit, on Wednesday, the 8th day of April, 1840, and third day of the term first herein aforesaid, the following judgment was entered of record, to wit:

JOHN KNOX, JAMES BOGGS, and JAMES A. KNOX, late traders as Knox, Boggs & Co.
vs.
THOMAS ECKFORD and PROBERT P. COLLIER.

The plaintiffs, by their attorney, appear, and a judgment by default having been entered in this cause, on the present day of the term, and no motion having been made to have the same set aside, it is, therefore, considered by the court, that said judgment by default be affirmed, and that the plaintiffs recover of the defendants their damages sustained by reason of the non-performance of the promises and assumptions in the declaration mentioned. But the court not being advised as to the amount of said damages, a jury of good and lawful men is empannelled, to wit: William Ramsey, Maclin Cross, Howell Taylor, Frederic R. Smith, Robert Miller, Charles Sevier, John H. Day, Greenberry Adamson, Samuel McClerkin, Samuel V. Gilleland, Ephraim Perkins, and Robert Glenn, who being elected, tried, and sworn well and truly to enquire thereof, on their oaths do say, they assess the plaintiff's damages by reason of the premises, *to three thousand four hundred and sixty-two dollars and twenty cents.* $3,462 20.

Therefore, it is considered by the court, that the plaintiffs recover of the defendants their damages by the jury so assessed as aforesaid, and their costs in this behalf expended; and that they have their execution.

Execution.

And thereupon, on the 24th day of April, 1840, a writ of *fieri facias*, founded upon the foregoing judgment, was issued from the clerk's office of said court in the following words and figures, to wit:

The President of the United States to the marshal of the district of West Tennessee, greeting:

You are hereby commanded that of the goods and chattels, lands and tenements, of Thomas Eckford and Probert P. Collier, in [L. S.] your district, you cause to be made three thousand four hundred and sixty-two dollars twenty cents damages, and thirty-four dollars thirty-nine cents cost of suit, which John Knox, James Boggs and James A. Knox, trading as Knox, Boggs & Co., in the district court of the United States, for the eighth circuit, in the district of West Tennessee, recovered against said Eckford and Collier for damages and costs of suit in a certain action in the said court lately determined, wherein the said Knox, Boggs & Co. were plaintiffs, and said Thomas Eckford and Probert P. Collier were defendants, whereof they are convict as appears of record; and have the said moneys ready to render before the judge

of our said court at Jackson, on the first Monday in October next. Herein fail not, and have you then and there this writ.

Witness the honorable Morgan W. Brown, judge of the district courts of Tennessee, this first Monday in April, A. D. 1840; and in the sixty-fourth year of our independence.

JAS. L. TALBOT,
Clerk of said court.

Endorsements.

Judgment, 8th April, 1840, for damages - - $3,462 20

Bill of costs.

Clerk.—Writ and bond, 3 20; declaration, 2 00; rule, 33; judgment by default, 33; judgment final, 2 13; taxing costs, 67; execution, 54; enrolling, 5 00 - - -	$14 14
Marshal.—2 services, 4 00; serving declaration, 1 00; 220 miles travel, 5 c. 11 00 - - - - -	14 00
Attorney.—Brinkley, tax fee - - - -	6 25
	$34 39

Correctly taxed.

Teste: JAS. L. TALBOT, *Clk.*

" Issued 24th April, 1840." " Came to hand same day issued.

ROB. J. CHESTER,
Mar. West Tenn.

Levied on a gray horse and sulkey, the property of P. P. Collier; bond taken for delivery, on 16th June, 1840.

ROB'T J. CHESTER,
Mar. West Tenn.

25th April, 1840.

Sold the above property in the town of Covington, to R. C. Brinkley, for the sum of two hundred and five dollars.

ROB'T J. CHESTER,
Mar. West Tenn.

16th June, 1840.

Levied this execution on 17 negroes and 4 mules, the property of P. P. Collier; bond taken for the delivery at Covington, on the 21st September, 1840.

ROB. J. CHESTER,
Mar. West Tenn.

" Bond forfeited, and sale of the negroes and mules levied on, enjoined by order of the chancery court at Brownsville, 21st Sept., 1840.

ROB'T J. CHESTER,
Mar. West Tenn.

Delivery bond.

Know all men by these presents, that we, P. P. Collier, Needham Bryan, Henry Feezer and Frederic R. Smith, all of the county of Tipton, and State of Tennessee, are held and firmly bound unto Knox, Boggs & Co., of the county of and State aforesaid, in the penal sum of six thousand nine hundred and thirty-four dollars; for the payment of which, well and truly to be made, we bind ourselves, and each of our heirs, executors, or administrators, jointly, severally, and firmly, by these presents. Sealed with our seals, and dated this 18th day of July, 1840.

The condition of the above obligation is such, that whereas the said Knox, Boggs & Co., obtained a judgment against Thomas Eckford and Probert P. Collier, before M. W. Brown, judge for district court of Tennessee, for three thousand four hundred and sixty-two dollars and 20 cents, and costs; upon which judgment an execution has been issued against the property of Eckford and Collier, said defenddants, and has on the day of the date hereof been levied upon the following property, of the following value, to wit:

Negro Jack, valued at $500; Jim, valued at 350; Washington, at $150; Margaret, at $150; Doll, at $400; Marcella, at $150; Zilphy, at $300; Bryan, at 300; Tony, at $150; Catharine, at $150; Casey, at $400; Cloey, at $300; Phillis, at $350; Cynthia, at $150; John, at $150; Lucinda, at $150; 4 mules, valued at $200; the property of the said P. P. Collier.

Now, if the said P. P. Collier shall deliver the property at Covington, on the 21st day of September, 1840, then and there to be sold to satisfy said judgment and cost, then this obligation to be void; else, to remain in full force.

(Signed)

P. P. COLLIER, [SEAL.]
M. BRYAN, [SEAL.]
HY. FEEZER, [SEAL.]
FRED. R. SMITH, [SEAL.]

Second execution.

And afterward, on the 27th day of October, 1840, the following writ of *fieri facias* was issued from the clerk's office of said court, to wit:

The President of the United States, to the marshal of the district of West Tennessee, greeting:

[L. S.] You are hereby commanded, that of the goods and chattels, lands and tenements of Thomas Eckford, Probert P. Collier, Needham Bryan, Henry Feezer and Frederic R. Smith, in your district, you cause to be made three thousand four hundred and sixty-two dollars and twenty cents, damages; and thirty-five dollars and sixty cents, costs of suit; which James Knox, James Boggs and James A. Knox, trading as Knox, Boggs & Co., in the district court of the United States, for the eighth circuit, in the district of West Tennessee, recovered against said Eckford and Collier, in a certain action in the said court lately determined, wherein the said Knox, Boggs & Co., were

plaintiffs, and said Eckford and Collier were defendants, whereof they are convict as appears of record; and have the said money ready to render before the judge of our said court, at Jackson, on the second Monday in December next; herein fail not, and have you then and there this writ.

Witness the honorable Morgan W. Brown, judge of the district courts of Tennessee, this first Monday in October, A. D. 1840, and in the sixty-fifth year of our independence.

JAS. L. TALBOT,
Clerk of said court.

Endorsements.

"Issued 27 October, 1840. Came to hand same day issued.
ROB'T J. CHESTER,
Mar. West Tenn."

"Levied this execution on seventeen negroes, valued at $4,250, and four mules valued at $200. Bond taken for the delivery of said property in the town of Covington, on the 5th Dec., 1840; names of all the defendants to the bond, and Jos. G. Boon as security; this 6th Nov., 1840.

ROB'T J. CHESTER, *M. W. T.*

"The property executed, delivered according to bond; and then arrested from me by the sheriff of Tipton, under an order of the chancery court at Brownsville; bill filed; see enclosed.

ROB. J. CHESTER, *Mar.*"

5th Dec. 1840.

"Judgment, 8th April, 1840. Damages, $3,462 20.

Bill of costs.

Clerk—writ, 3 20; declaration, 2 00; rule, 32; judgment by default, 32; judgment final, 2 13; costs, 67; execution, 54; enrolling cause, 5; alias execution and costs, 1 21, - - - - - $15 35

Marshal—service, 2 00; declaration, 1 00; 220 miles travel 5 c., 11 00, - - - - - - - - - 14 00

Attorney—Brinkley, tax fee, 6 25, - - - - 6 25

$35 60

Attest:

JAS. L. TALBOT, *Clerk, &c.*

UNITED STATES OF AMERICA, *ss:*

I, James L. Talbot, clerk of the circuit court of the United States, in the eighth circuit, for the district of West Tennessee, do certify that the foregoing transcript contains a full, correct, and complete copy of the record and proceedings of the district court of the United States for said district, in the cause of *Knox, Boggs & Co. vs. Thomas Eckford and Probert P. Collier*, as the same are of record and file in my office.

In testimony whereof, I hereto place my hand, and affix the seal of said court. Done at office in Jackson, this ninth day of October, *anno domini* one thousand eight hundred and forty-three, and in the sixty-eighth year of the American independence.
[L. S.]
JAS. L. TALBOT.

And thereupon, on the second day of June, 1841, defendants to said bill of complaint filed the following demurrer:

Demurrer.

District court of the United States for the district of West Tennessee, sitting at Jackson, Tennessee.—In Chancery.

The joint and several demurrer of Payton Smith, Probert P. Collier, Needham Bryan, Henry Feezer, Joseph G. Boon, and Josiah Horne, six of the defendants in the bill of complaint of Knox, Boggs & Co.

These defendants, by protestation, not confessing or acknowledging all or any of the matters and things in complainants' said bill contained to be true, in manner and form as set forth and alleged, do demur to said bill, and for cause of demurrer shew that the said complainants have not, by their said bill, made such a case as entitles them, in a court of equity, to any discovery from these defendants respectively, or any of them, or to any relief against them, as to the matters contained against them; and that any discovery which can be made by these defendants, or any of them, touching the matters complained of in said bill, or any of them, cannot be of any avail to said complainants for any of the purposes for which a discovery is sought against these defendants by said bill, nor entitle the complainants to any relief in this court touching any of the matters therein complained of.

Wherefore, and for divers other good causes of demurrer appearing in said bill, these defendants do demur thereto, and pray judgment whether they, or either of them, shall be compelled to make any further or other answer to said bill; and they pray to be hence dismissed with their reasonable costs in this behalf sustained.

SEARCY, *for defendants.*

Judgment.

And afterwards, at the April term, 1842, of said court, the honorable Morgan W. Brown, district judge, presiding, the following proceedings are of record, to wit:

KNOX, BOGGS & Co. vs. PEYTON SMITH et al. } In chancery.

This day came on to be heard the demurrer filed by the defendants, Henry Feezer, Joseph G. Boon, Peyton Smith, Josiah Horne, Needham Bryan, and Probert P. Collier, to complainants' bill; and after argument thereon, it is ordered by the court that said demurrer be overruled, and said defendants be required to answer the complainants' bill;

and that the said defendants be taxed, each, the sum of twelve dollars and fifty cents, for which execution shall issue.

Answer of F. R. Smith.

And on the 7th day of June, 1842, the defendant, Frederic R. Smith, filed his answer to the complainants' bill, as follows:

To the honorable Morgan W. Brown, judge of the district court of the United States for the district of West Tennessee.

The separate answer of Frederic R. Smith to the bill of complaint exhibited in said court against Probert P. Collier, Peyton Smith, Thomas Eckford, Needham Bryan, Henry Feezer, Joseph G. Boon, Josiah Horne, and your respondent, all citizens of the State of Tennessee, by John Knox, James Boggs and James A. Knox, citizens of the State of Pennsylvania, and late merchants in company under the firm and style of Knox, Boggs & Co.

Your respondent, for answer unto so much of said bill as he is advised it is material for him to answer, answers and says: that it is true, as stated in the complainants' bill, that, on or about the 18th of July, 1840, the marshal levied an execution, in favor of said complainants, upon seventeen negroes as the property of Probert P. Collier aforesaid, and upon four mules; and that the said Collier, with Needham Bryan, Henry Feezer, and your respondent, as his securities, did execute a bond for the delivery of said negroes and mules on the 21st day of September, 1840; that it is true said property was not delivered at the court house door in Covington, according to the conditions of said bond, because the aforesaid Peyton Smith had previously obtained an injunction, restraining the sale of said property under the execution in favor of complainants, and Gen. William H. Loring, an attorney at law, in whose opinion your respondent and his co-securities, and the marshal aforesaid, had implicit confidence, informed your respondent that the injunction aforesaid, which was then exhibited, was good, sufficient, and bound to be obeyed; and the said marshal being willing to abide by said opinion, your respondent did not consider said delivery bond as forfeited, but regarded the sale of said property as stopped by the injunction aforesaid, and considered himself and his co-securities as released from all further liability in the premises.

That afterwards the said marshal re-levied an execution in favor of the complainants upon the same seventeen negroes and four mules, as the property of said Collier; and that a bond was then given for the delivery thereof, with Joseph G. Boon as security; and that, on the day appointed for the sale thereof, the same was delivered according to the conditions of the bond, and the same was arrested from the marshal, by the sheriff of Tipton county, under an order of the chancery court at Brownsville.

Your respondent denies that he has ever combined or confederated with the said Peyton Smith, or any other person, to prevent the sale of the property aforesaid, or to defeat the execution of the complainants,

or in any wise to prevent them from the recovery of their debt. And now, having fully answered, prays your honor to release him from all further trouble and expense in the matter.

State of Tennessee, Tipton county.

Personally appeared before me, William B. Vincent, a justice of the peace in the county aforesaid, the above named Frederic R. Smith, and made oath, in due form of law, that the facts stated in the foregoing answer, as of his own knowledge, are true; and those derived from others he believes to be true.

FRED. R. SMITH.

Sworn to, and subscribed before me, this 4th June, 1841.

WM. B. VINCENT, *J. P.*

And afterwards, on the 14th day of April, 1842, the defendant, Peyton Smith, filed the following *answer:*

Peyton Smith's answer.

The separate answer of Peyton Smith to the bill of complaint filed by Knox, Boggs & Co., against this respondent and others.

Respondent now, and at all times, saving and reserving to himself all manner of advantage to the manyfold errors, uncertainties, and other imperfections in complainant's said bill contained, for answer to so much thereof as he is advised it is material for him to answer, answering, says: that, as to the recovery of the judgment at the time, and for the amount specified in said bill, the issuance of an execution thereon, the levy of the same upon the negroes and other property mentioned in the bill, the sale of a part of that property, the execution of a delivery bond with F. R. Smith, Bryan and Feezer, as securities of said Collier, respondent admits the same to be true.

Respondent admits that he applied to the honorable M. W. Brown for a writ of injunction to restrain the sale of said slaves upon the ground that they were his, and not Collier's, property; and that Judge Brown refused to grant the same.

Respondent states that, long prior to the recovery of the judgment by complainants against said Collier, he, said Collier, by deed duly proven and registered, conveyed to this respondent all of the said slaves for the purposes in said deed expressed; that said deed was made in good faith, and was bona fide, and respondent here denies the allegation that the same was fraudulent as against creditors. By this deed respondent was constituted a trustee, and the property covered by the deed was conveyed to him to secure certain debts set forth and specified in the deed. Respondent accepted of the trust long before complainants recovered their said judgment.

Respondent further answering, states, that he does not admit the allegation that he *filed* his bill in this honorable court to restrain the sale of said slaves. He states, that he applied to the honorable M. W. Brown for an injunction, which was refused him; that afterwards he was advised he had applied to the wrong tribunal; that the district court had

no jurisdiction; whereupon this respondent applied to a State judge, who unhesitatingly granted the writ of injunction. Respondent states, that he caused said writ to be issued, and that the same was afterwards, and about the time the said negroes were to be sold, shewn to one Robert J. Chester, the marshal, by respondent; that Chester obeyed the writ; that afterwards, complainants, or their counsel, sued out an alias execution on said judgment, and placed the same in the hands of said Chester, marshal as aforesaid, which was levied on the same negroes. Respondent, shortly after said levy, applied to the chancery court, then sitting at Brownsville, by a supplemental bill, setting forth the fact of the relevy on said negroes by Chester, the marshal; whereupon, the court made a peremptory order on the sheriff of Tipton county, to take into his possession and keep said negroes, to abide the further order of that court, and issued an order prohibiting said Chester from selling said slaves; that these orders were placed in the hands of the sheriff of Tipton county to be executed, and were by him executed; that the said sheriff, by virtue of said orders, took all of said slaves into his possession, and now holds the same under, and by virtue of, that order. Respondent states, that throughout this matter, he was governed by no feeling or desire other than a wish to discharge his duty as trustee; that the property was conveyed to him for specific purposes, and it was his duty to see it applied to those purposes, and to use all legal means to prevent its application to other purposes. The *cestui que trust* in the deed looked to this respondent to protect the property, and he is advised, that unless he had used due diligence in protecting it, he should have become individually responsible to them for its value. He applied to the State courts to protect his rights, because he was advised and believed that the district court had no jurisdiction, and that the State courts were the only tribunal which could protect his rights.

Respondent furthering answering states, that it is not true, as charged in said bill, that there was a combination and confederation between this respondent, the sheriff, Collier and his securities, in the delivery bond to prevent the sale of said property by the marshal. He states, that he adopted what he was advised and believed to be legal means of preventing the sale of said slaves by the marshal; that after procuring the orders aforesaid, and causing them to be placed in the hands of the sheriff, he considered that he had done all he could do, and depended on the sheriff to do his duty; that he did not advise or counsel with the sheriff as to his duty, or as to what he ought to do, or would do, under said orders; nor did he, in any manner, aid or abet the sheriff in getting possession of said negroes, further than procuring said orders by his supplemental bill, and causing them to be placed in his hands; that he employed counsel to aid him in the matter, and it was the advice of his counsel which he followed; that he looked to no other person but his counsel for advice and instructions; that he formed no combination or confederation with any person whatever; his desire was to use legal means, and none but legal means, in preventing a sale of said slaves; and if he has, in a single instance, violated the law, he has done it ignorantly, and not with a wilful intent.

Respondent further answering states, that it is not true, as stated in said bill, that the alias execution was levied upon other property besides said negroes; nor did this respondent, at any time, use any efforts, or adopt any means, to prevent the marshal from selling any other property, except said negro slaves.

Respondent further answering states, that since his above answer was written, but before the same was filed, the action of the State court has been had upon the matters set forth in his bill of injunction, to stay the sale of said slaves by the marshal; and that the said court, in said suit, have adjudged and decreed that the said negroes are the property of this defendant, and awarded a perpetual injunction restraining complainants and the said marshal from selling or converting any one of said slaves under, and by virtue of, plaintiff's execution against said Collier; and respondent submits to your honor, whether said adjudication is not a complete bar to this suit, and he relies upon the fact as fully as if the same was here specially pleaded.

Respondent further answering submits to this court, whether complainants have any equity; whether, if they have any remedy at all, it is not at law, and not in this court; and whether the levy by the marshal on said negroes, admitting them to be the property of Collier, is not a satisfaction of their execution, and vests the property in the marshal, and gives him alone the right to sue for it, and leaves complainants to their remedy against him; and if not the property of Collier, then, whether either the marshal or complainants have any right to seize or sell the same.

And now, having fully answered, defendant prays to be dismissed with his costs.

SEARCY, *for def't.*

State of Tennessee, Tipton county:

Peyton Smith, this 29th day of October, 1841, personally appeared before me, George M. Penn, one of the justices of the peace in and for said county, and made oath, in due form of law, that the facts set forth in the foregoing answer, stated as of his own knowledge, are true; and those stated as of the information of others, he believes to be true.

PEYTON SMITH.

Sworn to and subscribed this day and date above written.

GEO. M. PENN, *J. P.*, [SEAL.]
Tipton county, Tennessee.

And also, on the 4th day of April, 1842, the said defendant, Probert P. Collier, filed the following answer:

Answer of P. P. Collier.

The separate answer of Probert P. Collier, to the bill of complaint of Knox, Boggs & Co., filed against this respondent and others:

The respondent, now and at all times, saving and reserving to himself all manner of benefit and advantage to the manyfold errors and un-

certainties, and other imperfections, in complainants' said bill contained, for answer to so much thereof as he is advised it is material for him to answer, answering, says: that as to the recovery of the judgment at the time, and for the amount specified in complainants' said bill; the issuance of execution thereon; the levy of the same upon the negroes and other property mentioned in said bill; the sale of a part of that property; the execution of a delivery bond with F. R. Smith, Feezer & Bryan, as security, respondent admits the same to be true, with this exception, that he himself did not sign said bond. He admits that Peyton Smith applied to the honorable M. W. Brown for a writ of injunction to stay the sale of said slaves; that Judge Brown did not grant the writ, as he, respondent, understood. Respondent states, that long before the recovery of the said judgments by complainants against this respondent, he, respondent, by deed duly proven and registered, conveyed to said Smith all of the slaves mentioned in said bill of complaint; which said conveyance was made in trust, for the purposes in said deed expressed; that said deed was made in good faith, and was, and is, *bona fide*. And respondent denies the allegation, that the same was or is fraudulent as against creditors.

By the terms of said deed respondent was to remain in possession of said negroes for a limited time, which time had not expired when the said levy was made upon said negroes by the marshal. He further admits that Peyton Smith, after the refusal of Judge Brown to grant the writ of injunction, applied to the State court for a writ of injunction to stay the sale of said slaves, which was granted. That this application, as respondent was informed, was made because it was thought the district court had no jurisdiction, and the State court was the only tribunal to which he could properly apply for protection. That the injunction so issuing from the State court, was on the day on which said negroes were to be sold, shewn to said Chester, and he determined the same.

Respondent further states, that afterwards, complainants sued out an alias writ of *fi. fa.*, in their said judgment, and placed the same in the hands of R. J. Chester, the marshal, which latter named writ was levied on the identical negroes which had been previously levied on by said Chester by virtue of the previously issued writ of fi. fa.

Respondent admits, that he executed a second delivery bond, with the same securities, and Joseph G. Boon; that by the terms of this bond, the property was to be delivered in the town of Covington, on the day of Respondent denies that there was any property other than the negroes mentioned in said bond, or embraced in the last levy.

Respondent further answering states, that after the execution of the latter named bond, and before the day appointed for the sale of said slaves, said Peyton Smith, by amended or supplemental bill filed against complainants, Chester and this respondent, procured a peremptory order emanating from the chancery court at Brownsville upon the sheriff of Tipton county, to take said negroes into his possession, and safely keep them to abide the further order and decree of said court. That the said Boon, Feezer, Bryan, and F. R. Smith, who were respondent's securieties

for the delivery of said property, became alarmed least they should be held responsible on said bond.

That on the day on which said negroes were, by the conditions of said bond, to be delivered to Chester, all of said securities came to respondent, as they said, to see that the property was delivered to said Chester, in compliance of the covenants in said bond, and all of said negroes were paraded at the court house door, and formerly delivered over to Chester, in strict compliance with the covenants of said bond, and said bond was immediately delivered up to said securities. Respondent was present, but not, as charged in said bill, to aid, assist, or abet the sheriff of Tipton county to rescue said property from the said Chester. Respondent is free to admit, that, so far as his feelings were concerned, he decidedly preferred that the said property should go in satisfaction of the debts specified in the deed to Smith, because all those debts are his own; while the debt of complainant, so far as he is concerned, [is] only a security debt; and it was to give his own individual creditors a preference over his security debts that said deed was made; but although his preference was, that his own individual creditors should get the property, yet he denies positively that he was present, aiding and abetting the sheriff to rescue the property from the marshal. He denies that he formed any combination with any person or persons for that purpose.

Respondent further states, that he kept the negroes out of the way of the sheriff, so that he might not seize them under said order, until after they were delivered up to the marshal; that this was done so as to release and save his securities in the delivery bond; and the said sheriff had no opportunity to take possession of said negroes until after they were delivered to the marshal; that so soon as he learned that the order was obtained, and about to be issued to the sheriff, he caused the negroes to be concealed, to prevent his seizing them under said order. He did not advise or counsel with the sheriff as to what he would or ought to do under said order, nor did he, in any manner, aid or abet him in getting possession of said negroes.

Respondent further states, that at the time the first levy was made upon said slaves, he, respondent, was in North Carolina, and did not know of it until long after; that when the levy was made, J. T. Collier, the brother of this respondent, procured the said Feezer, Bryan, and F. R. Smith, to execute the first delivery bond; and Bryan, who was then the partner of respondent, signed respondent's name to said bond, at the request of J. T. Collier, as respondent learned; and the said Peyton Smith had applied to the hon. M. W. Brown for an [injunction] to restrain the sale of said slaves before respondent had returned home, and before he knew any thing about his, the said Smith's, intention of applying for said writ. Respondent denies that he formed any combination or confederation, fraudulently or illegally, to prevent the sale of said slaves by the marshal. He had no agency in procuring the order from the chancery court, further than telling said Smith that he ought to use all legal means to apply the property to the trusts specified in the deed. Respondent, when he executed said deed, was fully satisfied that his property would have

to go in payment either of his individual or security debts, and he greatly preferred his individual creditors should have it, as his securities and endorsers might be saved harmless, could the property be so applied, and therefore he executed the deed; and to this hour he desires that the property may be applied to the payment of his individual creditors, and the relief of his securities and endorsers, in preference to the payment of any debt for which he is a mere security. He thought then, and still thinks, it was the duty of the trustee to use all legal means to have the property so applied. He denies all fraud, combination, and confederation, wherewith he is charged; states the property is in the custody, and under the control of, the sheriff, under said order.

Respondent submits, whether the levy on said negroes did not vest the title in the marshal, and whether he alone is not the party injured by the sheriff, if any person is injured at all; and whether the complainants have not, if they have a remedy at all, a clear and unembarrassed remedy at law; and whether they have any equity as against this respondent.

Respondent further answering states, that the chancery court at Brownsville, in said suit between said Peyton Smith, and the said complainants, and the marshal, has decreed that the negro slaves mentioned in complainant's bill, and levied upon by the marshal by complainant's execution, are not the property of this respondent; but that the same belong to said Smith, for the purposes in said deed expressed; and has further decreed, that complainants and said marshal be perpetually enjoined from selling either of said negroes under and by virtue of plaintiffs' execution against this respondent; and respondent relies on the same in as full and ample a manner as if the same was here pleaded, as forming a complete bar to this suit.

And now, having fully answered all that he is advised it is material for him to answer, he prays to be dismissed with his costs, &c.

SEARCY, *for defendant.*

STATE OF TENNESSEE, *Tipton county:*

This 29th day of October, 1841, personally appeared before me, William B. Vincent, a justice of the peace, in and for said county, P. P. Collier, and made oath in due form of law, that the facts set forth in the foregoing answer, stated as of his own knowledge, are true; and those stated upon the information of others, he believes to be true.

PROBERT P. COLLIER.

Sworn to before me, the day and date above written.

WILLIAM B. VINCENT,
J. P. for Tipton county.

And on the said 14th day of April, 1842, the defendants Henry Feezer and Needham Bryan, filed the following joint

Answer.—Feezer and Bryan's answer.

The joint answer of Henry Feezer and Needham Bryan to the bill of complaint of Knox, Boggs & Co., filed against these respondents and others.

These respondents, now and at all times, saving and reserving to them-

selves all manner of benefit to the manyfold errors, uncertainties, and other imperfections in said bill contained, for answer to so much thereof as they are advised it is material for them to answer, answering, say: That, as to the recovery of the judgment at the time, and for the amount specified in the bill; the issuance of an execution founded on said judgment; the levy of the same on the negroes and other property mentioned *in* in the bill; the sale of a part of that property, and the execution of a delivery bond by these respondents, in conjunction with F. R. Smith, as the securities of said Collier, these respondents admit the same to be true.

These respondents further admit, that they understood that Peyton Smith applied to honorable M. W. Brown for an injunction to restrain the sale of said negroes, upon the ground that they, said negroes, had been conveyed to him by Collier prior to any lien acquired by complainants; and that Judge Brown had declined granting the same. They further understood, that afterwards, the said Peyton Smith had applied to one of the State judges for a writ of injunction to stay the sale of said negroes, which was granted; that the application for said injunction was made to the State court, because it was considered the district or federal court had no jurisdiction in the matter, and the application to the honorable M. W. Brown in the first instance, was improper. They further understood, that writs of injunction issued from the chancery court at Brownsville, restraining the sale of said negroes under and by virtue of complainant's execution. That on the day specified in said delivery bond for the delivery of said negroes, all the negroes and other property covered by said bond, were in the town of Covington ready to be delivered over to the marshal; and these respondents were there ready to hand over formally, or cause the same to be formally handed over, to the marshal. That about this time, the aforesaid injunction was handed to or served upon the marshal; that the marshal consulted with counsel, and concluded to obey the writ; and it was the distinct understanding of these respondents, that no formal delivery of the property was required; they were there to make a formal delivery, if required, and the property was there, and the marshal did not take or sell it, though he might have done so, for respondents were only waiting his decision or determination whether he would sell or not; and he determined he would not sell, but obey the writ; and respondents did not formally parade the negroes in the court square, and ceremoniously deliver them over to him; they deemed such a course unnecessary, though they were there, and he could have taken them, if he chose so to do.

These respondents considered, that the bond was discharged, or at least, that they, as securities in said bond, were released, and this was the distinct understanding with these respondents; and they were greatly astonished afterwards to learn, that the marshal had returned the bond as forfeited.

Respondents further answering, state, that some time after the return of said execution and bond, P. P. Collier and Robert J. Chester, the marshal, called upon these respondents and stated, that the same negroes had

been re-levied upon by virtue of an alias execution founded on said judgment, and desired to know if these respondents would join said Collier, as his securities, in a delivery bond. Respondents consented to do so, and signed the bond. By the terms of the bond, the property was to be delivered on the 5th day of December, 1840.

Respondents state, that there was no other property mentioned in said bond, and for the delivery of which they became responsible, other than the seventeen negroes mentioned in complainants' bill; that said negroes were valued in said bond at $4,250; that the negroes mentioned in this bond are the same levied on by the first execution, and covered by the first bond; that there were no mules or horses, or any other property mentioned in the bond; nor did these respondents by this bond become responsible for the delivery of any property other than said negroes; that said bond was executed on the 6th of November, 1840.

Respondents state, that after the execution of said bond, they learned that Peyton Smith had applied to the chancery court at Brownsville, and by bill, or amended bill, filed against Chester, the marshal, obtained an injunction restraining him from selling said negroes; the first injunction, as they were informed, being against complainants, their agents and attorneys—and also procured an order directing the sheriff of Tipton county to take said negroes into his custody. That this order was made by a State court, and these respondents became alarmed, least they should become in some way involved, either personally, or in a pecuniary point of view, and applied to counsel to know what course they should adopt to get out of the matter. They were advised by their counsel, by all means to deliver the property up to the marshal, on the day and at the place appointed and stipulated in said bond for its delivery. Respondents state, that in pursuance of said instructions, they, with their co-securities, were present at the time and place specified in said bond for the delivery of said property; that they had the property present, and did, then and there, formally deliver the same into the possession of R. J. Chester, the marshal; all of which was done in strict compliance with the covenants and conditions of their bond aforesaid; and said Chester then and there received the property, and delivered up to these respondents their bond aforesaid. Immediately, upon delivering the property to the marshal, the sheriff in Tipton county, in pursuance, as respondents understood, of the order of the chancellor aforesaid, demanded the negroes of the marshal, and they were given up to him by the marshal.

Respondents deny that they were present for the purpose of aiding, assisting, or in any manner abetting, the sheriff in procuring possession of said negroes, but for the sole purpose of delivering the same up to the marshal in pursuance of the covenants of their bond aforesaid, and thereby discharging themselves from liability on the same; that this was the course they had been instructed by counsel to pursue, as the best and only means of discharging themselves from liability and censure. They state that there was no force, menace, or threats on the part of the sheriff, or any other person whatever, to the knowledge of respondents, nor any attempt at violence of any kind; nor did they hear

any harsh or angry expression used by any person; so far as these respondents witnessed the transactions, all that was done was done in a peaceable and orderly manner; the sheriff produced his authority, and the marshal surrendered the property.

Respondents state that they had nothing to do, either directly or indirectly, with the demand and seizure by the sheriff of said negroes, or any one of them; that they neither advised, aided, abetted, or encouraged the same; that they were not present for that purpose, but for the sole purpose of complying with the conditions of their bond. They therefore deny that they had any thing to do with the rescue of said property, or any part thereof. They deny that they, or either of them, at any time combined or confederated, either with the said sheriff, or Collier, or Smith, or between themselves, to prevent the sale of said negroes, or any one of them, under and by virtue of complainants' execution. They deny positively, that they have, or ever had, any portion of said property in possession, except only for a few moments; and that, on the day of the delivery of the same to the marshal aforesaid, and for no other purpose but to deliver the same in discharge of their bond aforesaid; nor have they now any control whatever over said property, or any part thereof. They are advised that said property is kept by the sheriff of Tipton county in his custody, or under his control, under and by virtue of the aforesaid order emanating from the chancery court at Brownsville.

Respondents, further answering, submit to your honor whether complainants have any equity as against them; and whether, if the allegations in their bill were true, they have not a full and complete remedy at law, if they have any remedy at all. And respondents further submit whether the levy by the marshal on said negroes did not vest the property in him, and was not a satisfaction of complainant's execution, provided it turns out to be the property of defendant Collier; and whether, if they are responsible at all, it is not to the marshal, and not to the complainants, who must look to the marshal and not to these defendants.

Respondents, further answering, state, that the chancery court at Brownsville, in the suit of Peyton Smith against said complainants and the said marshal, has decreed the identical negroes mentioned in said bill of complainants, and levied on by said marshal, by virtue of complainants' execution, to be the property of said Smith, and not the property of said Collier, and therefore not liable to be sold under said execution; and has also decreed that complainants and said Chester be perpetually enjoined from selling either of said negro slaves under and by virtue of said execution; and respondents rely on this fact as forming a bar to this suit, and claim the benefit of the same as fully as if specially pleaded.

And now, having fully answered, they pray to be dismissed with costs, &c.

SEARCY, *Sol.*

State of Tennessee, Tipton county.

This day, it being the 29th day of October, 1841, Henry Feezer and Needham Bryan personally appeared before me, Wm. B. Vincent, one of the acting justices of the peace in and for said county, and made oath, in due form of law, that the facts set forth in the foregoing answer, stated as of their own knowledge, are true; and those sta'ed, as upon the information of others, they believe to be true.

HENRY FEEZOR,
NEEDHAM BRYAN.

Sworn to the day and date last above written.

WM. B. VINCENT,
J. P. for Tipton county.

And also, on the 14th day of April, 1842, aforesaid, the defendant, *Josiah Horne*, filed the following *answer.*

Answer of Horne.

The separate answer of Josiah Horne to the bill of complaint of Knox, Boggs and company, filed against this respondent and others.

This respondent, now and at all times, saving and reserving to himself all manner of advantage to the manyfold errors, uncertainties, and other imperfections in complainants' bill contained, for answer to so much thereof as he is advised it is material for him to answer, answering, says:

That as to the recovery of the judgment by complainants against Collier and others; the issuance of an execution thereon; the levy on said negroes; the execution of a delivery bond by Feezor, Bryan and F. R. Smith; the forfeiture of that bond; the issuance of an alias execution; the re-levy of the same upon said negroes; the execution of a second delivery bond by the same parties with J. G. Boon; the application of Peyton Smith to the Hon. Morgan W. Brown for an injunction to stay the sale of said slaves, and the refusal of the same, this respondent says, he knows nothing of his own knowledge, but presumes the same to be true, as he has heard these things from different sources.

Respondent states, that, about the time of the occurrence of the events mentioned in complainants' bill, he, respondent, was, and now is, the sheriff of Tipton county, Tennessee; that, as such sheriff, he took the oath and entered into bond as required by the statutes of said State; that, in the month of December, 1840, there was placed in the hands of respondent, to be executed by him as sheriff as aforesaid, a peremptory order at the suit of Peyton Smith against complainants, Chester and Collier, commanding him to seize and take into his possession the identical negroes mentioned in complainants' bill, and safely to keep them to abide the further order and decree of the chancery court; that said writ emanated from the chancery court at Brownsville; a copy of which said order is here filed marked A, and prayed to be taken as a part of this answer; that, on the same day on which respondent received the said writ and order, said Chester then being in Covington, Tipton

county, respondent was informed that he, Chester, was about to proceed to sell said slaves, and respondent considered it his duty to go instantly and execute the process. He immediately went over to the court house, in the town of Covington, where he found said Chester, who then had in his possession the negroes mentioned in the bill; respondent handed to him the order commanding respondent to take into his possession said negroes; he read the same; respondent then demanded of him the negroes, and he gave them up to respondent, who yet holds them under and by virtue of said order; he further states, that, throughout this matter, he was actuated and governed by no other motive than that of faithfully discharging his duty as a public officer; he considered himself compelled by the obligations of his oath, and the duties of his office, to execute the process which had been placed in his hands; he did not seek or desire the responsibility of executing the said process and order; they were forced upon him; had he declined to execute the same he would have laid himself liable to be punished for contempt in wilfully disobeying the mandate and process of the court, and would have subjected himself and his securities to a heavy penalty. Respondent has good reason for believing, that if he had not executed the said order and process, he would have been severely punished by the chancellor. His situation was such, that he had no other alternative but to execute the process; had he refused to do so, the district court could not have delivered him from the certain punishment that awaited him at the hands of the chancellor.

Respondent, further answering, states, that he denies positively that he formed any combination or confederation with any person or persons whatsoever, to prevent the plaintiff from selling said slaves under said execution. It was, and is, a matter of indifference to respondent, what disposition is made of said slaves; all he desires is, that responsibilities will not be thrown upon him; he has no feeling in the matter further than to discharge his duty as an officer, in such a manner as not to incur responsibility or censure; and respondent, throughout the whole transaction, has done nothing more than he was commanded to do, and what the duties of his office, and the obligations of his oath, impelled him to do; and what he did do, was not done with a view of hindering or embarrassing complainants in the recovery of their debt, or with a view of obstructing the process of the district court, but solely with a view of discharging an unpleasant duty which had devolved on this respondent as a public officer, in such a manner as to acquit himself from censure and punishment. He states that there were no threats, menaces or violence of any kind, no harsh or angry language used: he in quite a peaceable and orderly manner demanded the property, and it was given up to him. He submits to this court, whether complainants have any equity as against him, and whether, if they are entitled to relief at all, they have not a clear and unembarrassed remedy at law; whether the levy by the marshal did not, if the property is, in truth, the property of Collier, amount to a satisfaction of complainants execution, and vest the right of property in the marshal, who alone has the right to sue for

the same; and whether complainants' remedy is not against the marshal, and not against this respondent.

Respondent, further answering, states, that since his answer was written, but before the same was filed, the suit instituted by said Smith against complainants and Chester, the marshal, in which said suit the writ under which respondent seized said negroes issued, has been determined by the chancery court at Brownsville in favor of said Smith; and complainants and said Chester have, by the decree of said court made in said suit, been perpetually enjoined from selling either of said slaves, and this respondent ordered to deliver said slaves over to said Smith. And respondent further states, that having no other authority to seize or hold said slaves, other than the writ aforesaid, and having been directed by said court to deliver said slaves over to said Smith, he has done so, in pursuance of said order and decree, and has not now any control whatever over either of said slaves, nor any right to take the possession or control of either of them.

And now, having fully answered all the allegations in said bill, that he is advised it is material for him to answer, prays to be dismissed with his costs.

SEARCY, *for defendant.*

STATE OF TENNESSEE, *Tipton county:*

Josiah Horne, this 29th day of October, 1841, personally appeared before me, Wm. B. Vincent, an acting justice of the peace in and for said county, and made oath, in due form of law, that the facts set forth in the foregoing answer, stated as of his own knowledge, are true, and those he has stated as on the knowledge of others, he believes to be true.

J. HORNE.

Sworn to and subscribed, on day and date last above written.

WM. B. VINCENT, *J. P.*

Exhibit.—Exhibit A.

STATE OF TENNESSEE:

To the sheriff of Tipton county, greeting:

Whereas, it hath been represented unto the chancellor, in our chancery court at Brownsville, in the western division of the State of Tennessee aforesaid, on the part of Peyton Smith, trustee, &c., complainant, that he has lately exhibited his amended bill of complaint in our said chancery court, against Knox, Boggs and Company, P. P. Collier, and Robert J. Chester, defendants, to be relieved touching the matters therein complained of; in which said bill it is, among other matters, set forth, that the said defendants are combining and confederating to injure the complainant touching the matters set forth in said bill, and that their actings and doings in that behalf are contrary to equity and good conscience.

We, therefore, in consideration of the premises, do strictly command you, the said sheriff of Tipton county, Tennessee, that you do absolutely

seize and take into your possession, immediately and forthwith, at all hazards, the following negro slaves, to wit: Jack, Jim, Jane, Marcella, Zilpha, Washington, Margaret, Doll, Bryant, Toney, Catharine, Cully, Cynthia, Sam, John, Clara, and Lucinda, heretofore levied on by the marshal of West Tennessee as the property of said Collier, to satisfy a judgment in favor of said Knox, Boggs & Co.; and do you safely and securely keep said slaves, so that you have them forthcoming to abide the further order of our said chancery court; and this you shall in no wise omit, under the penalty prescribed by law.

Witness, Sheppard M. Ashe, clerk and master of our said court, at office, in Brownsville, this second Monday in November, 1840, and in the 65th year of American independence.

SHEPPARD M. ASHE,
Clerk and master.

Endorsements.—"Issued 20th November, 1840, come to hand Dec'r 5th, 1840. J. HORNE, *Shff., T. C.*"

"Levied this attachment on all the within named negroes, except *Jim*, who was not found, nor was he levied on by the marshal of Tenn.
J. HORNE, *Shff. T. cty.*"

Dec. 5th, 1840.

STATE OF TENNESSEE, *Haywood county:*

I, S. M. Ashe, clerk and master of the chancery court at Brownsville, in the county and State aforesaid, do hereby certify, that the foregoing is a true, perfect, and correct copy of an attachment, and endorsements thereon, issued from said court on the 20th day of November, 1840, in a suit therein pending, wherein Peyton Smith, trustee, &c., is complainant, and P. P. Collier, Knox, Boggs & Co., and Robert J. Chester, are defendants.

Given under my hand, at office, in Brownsville, this the 26th day of May, A. D. 1841.

SHEPPARD M. ASHE,
Clerk and master.

And also, on the 14th day of April, 1842, aforesaid, the defendant, Joseph G. Boon, filed the following answer:

Answer of Boon.

The separate answer of Joseph G. Boon to the bill of complaint of Knox, Boggs & Co., filed against this respondent and others.

This respondent, now and at all times, saving and reserving to himself all manner of benefit and advantage to the manifold errors, uncertainties, and other imperfections in complainants' said bill contained, for answer thereto, or so much thereof as he is advised it is material for him to answer, answering, says: that as to the recovery of the judgment at the time, and for the amount specified in the said bill; and the issuance of an execution founded on the said judgment; and the levy of the same

on the negroes and other personal property; the sale of a part of that property; the execution of a delivery bond by Probert P. Collier, Needham Bryan, Henry Feezor, and Frederic R. Smith, this respondent knows nothing of his own knowledge, and therefore can only answer, that he has heard of these things; nor does he know, of his own knowledge, any thing in relation to the application, by Peyton Smith, to the Hon. M. W. Brown for an injunction to stop the sale of said property, but heard that he had gone to Nashville on business relating to that property.

Respondent further answering states, that it is true that said Smith had filed a bill in the chancery court at Brownsville, and obtained an injunction restraining the sale of said negroes, on the ground that they were his property, and ought not to be made subject to the debt of the said Collier. Respondent states, that some time after the filing of the injunction, Robert J. Chester, the said marshal, and P. P. Collier, called on this respondent and stated, that the said negroes had been re-levied upon by the said Chester, by virtue of an alias execution in favor of complainants, and desired to know if this respondent would join said Feezor, Bryan, and F. R. Smith, as the securities of the said Collier, for the delivery of said property to the said Chester, on the 5th day of December, 1840. Respondent consented to do so, and signed said bond, in conjunction with said Smith, Feezor, and Bryan, as securities. Respondent states, that there was no other property mentioned in said bond, and for the delivery of which he became responsible, other than the seventeen negroes mentioned in complainants' bill; that said negroes were valued in said bond at $4,250; that there were no mules or horses, or any other property whatever, mentioned in said bond, nor did respondent become responsible for the delivery of any property other than said negroes; that the said bond, for the delivery of said negroes, was executed on the 6th day of November, 1840.

Respondent states, that after he had joined in the execution of said bond, he learned that Peyton Smith had applied to the chancellor at Brownsville, and procured an injunction restraining the sale of said negroes, and procured an order directing the sheriff of Tipton county to take said negroes into his possession; that the order was given by the chancellor for the State, and respondent became very uneasy least he should be held liable on his bond, and was determined to be present on the day said property was to be delivered, and use all his exertions to have the same delivered to the marshal. Respondent was present with the other securities in the said delivery bond, and the object of respondent was not to aid, or assist, or in any manner abet, the sheriff of Tipton county, in procuring the possession of said negroes, but for the purpose of delivering the same up to the marshal, in pursuance of the covenants of said bond, and thereby discharge himself from any liability on the same.

Respondent states, that he, with his co-securities, did, on the day specified in said bond, deliver to Robert J. Chester, the said marshal, at the court-house in the town of Covington, Tipton county, all of said ne-

groes, in strict pursuance of the covenants in said bond, and that the conditions of said bond were in every respect complied with; and the said Chester, on the delivery of said property to him, delivered up to respondent, and his co-securities, their said bond.

Respondent states, that immediately after said negroes were delivered to said Chester, in discharge of said bond, the sheriff of Tipton county demanded of said Chester, the marshal aforesaid, all of said negroes, and they were delivered to him by said Chester; that the said demand was made by said sheriff in pursuance of the order aforesaid; that there was no force, menace, or threat on the part of said sheriff, or any other person whatever, nor any attempt whatever of that kind; that the sheriff produced his authority, and the said Chester surrendered the property.

Respondent states, that he has had nothing to do, either directly or indirectly, with the demand by said sheriff of said negroes; that he neither advised, aided, abetted, or in any manner countenanced or encouraged, the same; that he was not there for that purpose, but for the purpose of seeing that the conditions of said bond, for the delivery of the said negroes, was complied with, and none other. He therefore denies positively, that he had any thing to do with the rescue of said property by the sheriff; he denies positively, that he, at any time, combined with said Smith, or others, to prevent the sale of said property, or that he formed any combination or confederation with said Smith, or any other, to prevent the said property from being made subject to complainants' claims.

Respondent denies that he has, or ever had, any portion of said property in his possession, except for the purpose of delivering it to the marshal as aforesaid, and then only for a few moments; that he never had, nor has he now, any control over said property.

Respondent further states, that he is informed and believes, that the chancery court at Brownsville, in the said suit between said Peyton Smith and complainants, and the marshal, has decreed the said negro slaves to be the property of said Smith, and perpetually enjoined said complainants and said marshal from selling or converting either of said negroes, under and by virtue of complainants' execution; and respondent relies upon this fact as a bar to this suit, in as full and ample a manner as if the same was here pleaded. He denies that complainants have any equity against him, whether the levy of the marshal did not vest the property in him; and now, having fully answered, prays to be hence dismissed with his cost.

SEARCY, *for deft.*

STATE OF TENNESSEE, *Haywood county:*

This 12th day of May, 1841, Joseph G. Boon personally appeared before me, C. P. Taliaferro, one of the acting justices of the peace in and for said county, and made oath, in due form of law, that the facts set forth in the foregoing answer are true, to the best of his knowledge and belief.

J. G. BOON.

Sworn to and subscribed, the day and date above written.

C. P. TALIAFERRO, *J. P.*

And thereafter, at May rules, 1842, of said court, the complainants filed the following replication.

Replication.

UNITED STATES OF AMERICA, *district of West Tennessee:*

Federal court at Jackson, in the 8th circuit, May rules, 1842.

KNOX, BOGGS & Co.,
vs.
PEYTON SMITH.

The replication of John Knox, James Boggs, and James A. Knox, the complainants, to the answers of Peyton Smith, Probert P. Collier, Josiah Horn, Joseph G. Boon, Henry Feezor, Frederic R. Smith, and Needham Bryan, the defendants.

These repliants, saving unto themselves all and all manner of advantage of exceptions to the manifold insufficiencies of the said answers, for replication thereunto say, that they will aver and prove their said bill to be true, certain, and sufficient in law to be answered unto; and that the said answers of the defendants are uncertain, untrue, and insufficient to be replied unto by these repliants; without that, that any other matter or thing whatsoever, in the said answer contained, material or effectual in the law to be replied unto, and herein not replied unto, confessed and avoided, traversed or denied, is true; all which matters and things, these repliants are, and will be, ready to aver and prove as this honorable court shall award; and humbly pray, as in and by their said bill they have already prayed.

R. C. BRINKLEY, *Sol.*

The testimony on part of the complainants.

On the 5th day of August, 1842, the complainants filed interrogatories in the clerk's office of said court, and issued the following notice:

To Messrs. Peyton Smith, Josiah Horne, Probert P. Collier, Frederic R. Smith, Joseph G. Boon, Needham Bryan, and Henry Feezor.

GENTLEMEN: You are hereby notified, that we have filed interrogatories in the office of the clerk of the circuit court of the United States of America, at Jackson, Tennessee, to be answered by Robert J. Chester, John W. Harris, Alexander W. Smith, Niles M. Temple, Stephen Smith, and Robert Clarkson, and to be read as evidence in the chancery suit now pending in the circuit court of the United States of America, at Jackson, Tennessee, wherein we are complainants, and you are defendants.

JOHN KNOX,
JAMES BOGGS,
JAMES A. KNOX,
By R. C. BRINKLEY, *their attorney.*

August 5th, 1842.

Endorsements.

"Executed, by delivering a copy of this notice to each of the persons following: Probert P. Collier, F. R. Smith, Needham Bryan, Henry Feezor, and Thomas Eckford.

ROBT. J. CHESTER, *M. W. T.*"

"Isaac R. Bledsoe is hereby authorised and empowered to execute this notice on Josiah Horne, J. G. Boon, and Peyton Smith. Witness my hand and seal, this 1 August, 1842.

ROB. J. CHESTER, [SEAL.]
Marshal West Tenn."

"Executed on Josiah Horne and Peyton Smith, by handing to each a copy of this notice, this 16 August, 1842; and on J. G. Boon, by handing him a copy of this notice on the 6th Sept., 1842.

J. R. BLEDSOE, *Spl. D. M.*"

Deposition of Chester.

UNITED STATES OF AMERICA,
District of West Tennessee:

Federal court at Jackson.

Interrogatories to witness, Robert J. Chester, filed by complainants in the chancery suit now pending in the circuit court of the United States of America, at Jackson, Tennessee, wherein Knox, Boggs & Co., are complainants, and Peyton Smith, Josiah Horne, Probert P. Collier, Henry Feezor, Neadham Bryan, Frederic R. Smith, and Joseph G. Boon, are defendants.

Question 1st by complainants. Examine the copy of the deed of trust herewith filed, executed by Probert P. Collier and Peyton Smith, bearing date the 14th day of March, 1839, and state the value of the property therein specified to be conveyed in trust, at the time said deed of trust bears date.

Answer. I believe, from the ages, &c., of the negroes mentioned in the deed of trust, and what I saw of them when delivered to me, that they were worth, at the date of conveyance, seven to eight thousand dollars; I do not know what the mules and horses are worth, nor am I acquainted with the value of the land, or the town lots.

Question 2d by complainants. If you are not acquainted with the value of all the property mentioned in said trust deed, state the value of such as you are acquainted with; and state whatever else you know in relation thereto, that would be beneficial to either the complainants or defendants in this cause.

Answer. My answer to the first interrogatory will be my answer to this.

ROB. J. CHESTER.

Sworn to, and subscribed, before me, this 10th October, 1842.

JAS. L. TALBOT, *Clerk D. C.*

J. W. Harris and A. W. Smith.

Interrogatories to be answered by Alexander W. Smith and John W. Harris, in the aforesaid chancery suit in the circuit court of the United States, at Jackson, Tennessee, wherein Knox, Boggs & Co., are complainants, and Peyton Smith et als. are defendants.

Question 1st by complainants. Examine the deed of trust herewith filed, executed by Probert P. Collier and Peyton Smith, bearing date the 14th day of March, 1839, and state the value of the property therein specified to be conveyed in trust at the time the said deed of trust bears date.

Answer. I, J. W. Harris, have examined the deed referred to in said interrogatory, and suppose the negroes, judging from their age and size as stated in said deed of trust, to have been worth, at the date of said deed, seven thousand six hundred and fifty dollars; not being personally acquainted with but few of them, can only state their value from what appears to be their ages in the deed. Horses and mules supposed to be worth $400; household and kitchen furniture supposed to be worth four hundred and eleven dollars, including spinning machine, barouche, blacksmith's tools, and loom. As to the land I have no idea what it was worth, never having been upon it that I know of, and not being acquainted with the value of land.

I, A. W. Smith, answer and say, that I am acquainted with the property conveyed in the deed mentioned in the above interrogatory, and believe it to have been worth, at the date of the said deed, ten thousand three hundred and sixty-six dollars.

Question 2d by complainants. State whatever else you know touching this controversy, that would be of service to either the complainants or defendants.

Answer. We know nothing touching this controversy, that would be of service to either complainants or defendants.

J. W. HARRIS,
A. W. SMITH.

Sworn to, and subscribed, before me, this 26th Sept., 1842.

J. BROWN,
J. P. for Tipton county, Ten.

Clarkson.

Interrogatories to be answered by Robert Clarkson, touching the chancery suit in the circuit court of the United States, at Jackson, Tennessee, wherein Knox, Boggs & Co., are complainants, and Peyton Smith, Josiah Horne et al., are defendants.

Question 1st by complainants. In what sum was Probert P. Collier indebted to you on the 14th day of March, 1839?

Answer. I am unable to state, precisely, the amount due me by P. P. Collier on the above day, not being at the court-house to examine the records, which would shew he was indebted to me $2,500, in four separate notes of $625. I think he had entirely liquidated one note at the

above date, but am not certain, and perhaps had paid some on one other of the notes, but cannot say what amount.

Question 2, by same. Did not Collier owe you the sum of $1,875, evidenced by three several notes for $625 each; or did he owe you any part thereof? And if he did, how were such debts created?

Answer. Said Collier owed me a balance on said notes of $2,500, of, I think, some $1,100, or $1,200; which balance I assigned, and Collier and myself confessed judgment for the said balance in the circuit court of Tipton county. I do not recollect what term, but said judgment still stands open and unsettled.

Question 3, by same. State whatever else you know, that will be of advantage to either complainants or defendants in this cause.

Answer. I know of nothing else that would be of any advantage to either complainants or defendants.

R. B. CLARKSON.

Sworn to, and subscribed, before me, the 7th day of October, 1842.

J. C. WALKER, *J. P.*

Testimony on part of defendants.—Deed of trust.

PROBERT P. COLLIER to PEYTON SMITH.

Deed of trust registered April 2d, 1839.

This indenture, made and entered into this the 14th day of March, 1839, between Probert P. Collier, of the county of Tipton, and State of Tennessee, of the one part, and Peyton Smith, of the county and State aforesaid, of the other part.

Whereas the said Probert P. Collier is justly indebted unto the following persons, to wit: to Robert Clarkson, in three several notes, one for six hundred and twenty-five dollars, due the 25th December, 1837; one for the sum of six hundred and twenty-five dollars, due 25th December, 1838; one for the sum of six hundred and twenty-five dollars, due the 25th December, 1839; also one note payable to Jordan Brown, for one hundred and eighty-two dollars, or thereabouts, on which said note there has been a judgment obtained before Robert I. Mitchell, justice of the peace for said county; also one note payable at the Memphis bank, in the State aforesaid, on which said note Joseph T. Collier, James D. Holmes, and Samuel A. Holmes, merchants and partners, trading under the firm and style of J. D. Holmes & Co., are endorsers, for five hundred and forty-four dollars, on which said note there has a judgment been obtained in the circuit court for the county aforesaid; also one note to Isaac Willough, for four hundred and twenty-one dollars, the date of said note not recollected, on which there has a judgment been obtained in the circuit court for the county aforesaid, at the October term, 1839; also one note payable at the bank of the Merchants Association of Randolph, for two hundred dollars, dated the 27th day of January, 1838, on which said promissory note Gabriel Smither, James D. Holmes, and Samuel Glass, are endorsers; also one note to Stephen Smith, for nine hundred dollars, the dates of which are not recollected; one payable at

the branch of the State Bank of Sommerville, for five hundred and eighty-one dollars, dates not recollected, on which said note Joseph T. Collier and James Hadley are endorsers; also one payable to James D. Holmes and Samuel A. Holmes, merchants and partners in trade, trading under the style of J. D. Holmes & Co., for three hundred and fifty dollars, due 1st January, 1839; also one payable to Joseph T. Collier, for four hundred dollars, dates not recollected; also one due and payable to Forsythe, Goodwin & Co., commission merchants, New Orleans, for five hundred and forty-four dollars, now in judgment in the circuit court of the county and State aforesaid.

Now, the above named creditors, to wit, Robert B. Clarkson, Jordan Brown, Isaac Killough, Stephen Smith, James D. Holmes, Samuel A. Holmes, Joseph T. Collier, and Forsythe, Goodwin & Co., merchants of New Orleans, being willing to wait and give the further indulgence of eighteen months longer from the date of this indenture, with the said Probert P. Collier, upon having their debts and the interest accruing thereon; and the said Probert P. Collier being willing to give them a certain assurance that their money shall be paid at the expiration of eighteen months from this date; and the said Probert P. Collier being extremely desirous to save harmless and secure from all liabilities his endorsers as above described on the several notes already specified in this indenture as such endorsers.

Now, therefore, this indenture *witnesseth*, that the said Probert P. Collier, as well in consideration of securing the said Robert B. Clarkson, Jordan Brown, Isaac Killough, Stephen Smith, James D. Holmes, Samuel A. Holmes, Joseph T. Collier, and Forsythe, Goodwin & Co., merchants of New Orleans, in the faithful payment of their debts and interest as aforesaid, and securing and saving harmless his endorsers as aforesaid, as also the sum of one dollar to him the said Probert P. Collier in hand paid by the said Peyton Smith, the receipt whereof is hereby acknowledged, hath this day granted, bargained, sold, transferred, assigned, and set over, and by these presents doth grant, bargain, sell, transfer, assign, and set over, unto the said Peyton Smith, the following real estate and personal property, to wit, as hereafter described, to wit:

One tract of land on Big Hatchie river, containing seven hundred and fifteen acres, bounded as follows: beginning at the north west corner of grant No. 333, at a sweet gum, in the original a black oak, marked HR; thence south, six hundred and twenty five poles, to a stake and pointers; thence east, one hundred and eighty-three poles, to a stake and pointers on King and Harris' line; thence north, with said line, six hundred and twenty-five poles, to a stake and pointers on the base line of the "Hatchie connexion;" thence, with said line, one hundred and eighty-three poles, to the beginning.

Also, one tract of twelve hundred and fifty acres, lying both sides of Big Hatchie, his part of a 5,000 acre tract, granted to John Estis per grant 334, lying east of the 1,250 acre allotted to Joseph T. Collier in the division between them.

Also, one lot in the town of Covington, known on the plan of said town as No. 16.

Also, the following lots in the plan of said town, as lots No. 23, 29, 48, and part of lot No. 47, fronting on Liberty street, beginning at a stake, the north-east corner of lot No. 45, and the northwest corner of said lot No. 47; running thence south, fifty-three feet and three and one half inches to a stake, the south-east corner of lot No. 45; thence east, eighty-eight feet four inches, to a stake in the west boundary line of lot No. 48; thence north, fifty-three feet three and a half inches, to a stake, the north-east corner of said lot No. 47, and north-west corner of said lot No. 48; thence west, with the north boundary of said lot No. 47, to the beginning.

Also, one undivided moiety of four lots in the town of Covington, known and designated in the plan of said town, as lots No. 25, 26, 27, 28.

One acre of land, being part of a seventy-seven acre tract sold by McLemore and Vaulx to William White, and bounded as follows, viz: beginning twelve poles south of the east corner of the 80 acre tract sold to James H. Flack, at a stake fifteen feet east of a white oak marked R. W. B. P.; thence south, twelve poles, to a larger white oak, marked R. W. B. P.; thence west, thirteen poles, to a stake; thence north, twelve poles, to a stake; thence east, thirteen poles, to the beginning.

Also, the following negroes, to wit: Allen, a man, aged 36 years; Jack, a boy, aged 22 years; Jim, aged 12 years; Calvin, 11 years; Jane, a negro woman, aged 33 years; Washington, a boy, 4 years; Margaret, a little girl, aged 2 years; Doll, a woman, aged 26 years; Marcella, a girl, aged 6 years; Zilphy, 38 years; Bryan, aged 11 years; Toney, aged 4 years; Catharine, aged 2 years; Culy, aged 23 years; Cloey, aged 40; Phillis, aged 28; Cynthia, aged 9; Sam., 6 years; John, 4 years; Lucinda, one year.

Also, four horses; six mules; one half of grey stallion Rodolph.

Also, household furniture, consisting of one china press; 1 sugar chest; 1 tin safe; 1 dining table; 1 breakfast table; 1 bureau; 1 candle-stand; 5 beds, and furniture pertaining thereto; 2 large looking glasses; 1 clock; 1 set of chairs; 1 desk.

Also, kitchen furniture, consisting of pots, ovens, &c.

Also, one spinning machine and loom; one barouche and harness; 1 waggon and gear; 1 set of blacksmith's tools.

And each and every of them to the said Peyton Smith, his heirs and assigns, to the proper use and behoof of the said Peyton Smith, his heirs and assigns, forever.

In trust, however, and to the interest and purpose, that if the said three notes, payable to the said Robt. B. Clarkson, for six hundred and twenty-five dollars each, dates as above described; also the note, payable to Jordan Brown for one hundred and eighty-two dollars, on which said note there has a judgment been obtained before Robert J. Mitchell, justice for said county; also the note, payable at the Memphis Bank, endorsed by Joseph T. Collier, James D. Holmes, and Samuel A. Holmes, for five hundred and forty-four dollars, now in judgment in the Tipton circuit court; the one payable to Forsyth, Goodwin & Co., commission merchants of New Orleans, for five hundred and sixty-one dollars, now

in a judgment as above described; also the note, payable to Isaac Killough, for four hundred and twenty-one dollars, now in a judgment as before described; the one, payable to Randolph Merchants' Association, for two hundred dollars, endorsed by Gabriel Smither, James D. Holmes, and Samuel Glass, dates as above described; the one, payable to Stephen Smith, for nine hundred dollars, dates not recollected; the one, payable to the Branch Bank of the State of Tennessee, at Sommerville, for five hundred and eighty-one dollars, dates not recollected, endorsed by Joseph T. Collier and James Hudley; the one, payable to James D. Holmes, and Samuel A. Holmes, merchants, for three hundred and fify dollars, due and payable 1st January, 1839; the note, payable to Joseph T. Collier, for the sum of four hundred dollars, dates not recollected. All of the above notes not well and truly paid, with all lawful interest accruing thereon; and if each of his endorsers, as appear on the several notes described in this indenture, are not entirely secure from each and all of their liabilities, by him, the said Probert P. Collier, or some other person for him, before the expiration of eighteen months from this date; then, and in that case, the said Peyton Smith, in executing this trust, hereby taken upon himself, advertise the said real and personal property for the space of twenty days, in a paper printed at Randolph, Tennessee, and by written advertisements at four of the most public places in the county, one of which shall be at the court-house door of the county aforesaid, that he will expose to the highest bidder the said land and negroes, horses, mules, household furniture, and kitchen furniture, spinning machine and loom, the barouche and harness, wagon and gear, and blacksmith's tools; one of the said lots in the town of Covington, the one on which the said Probert P. Collier resides, on a particular day, for ready money; and if the money be not still paid on that day, designated as aforesaid, then the said Peyton Smith shall proceed to sell the above described real and personal property for ready money to the highest bidder, and after such sale, to make good and sufficient deeds and bills of sale in fee for said property, conveying all the right and title the said Probert P. Collier or his heirs may have in and to the same.

And this indenture further witnesseth, that the said P. P. Collier is to still keep and retain the said land and personal property as above described in his own possession, subject for all losses, which the said property may sustain, until the expiration of eighteen months from this date; and provided, nevertheless, that if the said money and interest should be paid before the day of sale herein mentioned, and his endorsers secure from liabilities as aforesaid, then this indenture to be wholly void and of no effect, either in law or equity.'

In witness whereof, the said Probert P. Collier hereunto sets his hand and seal, this the 23d March, 1839.

PROBERT P. COLLIER. [SEAL.]
PEYTON SMITH. [SEAL.]

Witnessed by
J. P. FARRINGTON,
F. M. GREEN.

STATE OF TENNESSEE, *Tipton county:*

Personally appeared before me, Frederic R. Smith, clerk of the county court of Tipton county, in the State aforesaid, Probert P. Collier and Peyton Smith, the parties to the foregoing deed of trust, with whom I am personally acquainted, and they acknowledged that they executed the same on the day it bears date, for the purposes therein expressed, as witness my hand at office, this 23d day of March, 1839.

FRED. R. SMITH, *Clk.*
By PAT. H. NUNNALLY, *D'pty.*

STATE OF TENNESSEE, *Tipton county:*

I, James Overall, register of the county aforesaid, certify the foregoing to be a true and correct copy of a deed of trust from Probert P. Collier to Peyton Smith, with the clerk's certificate thereon endorsed, as registered in my office, in book E, pages 33, 34, 35, 36.

Witness my hand at office, this 15th day of March, A. D. 1841.

JAMES OVERALL,
Register Tipton county, Tennessee.

Decree in State court.

Decree of the chancery court at Brownsville.

PEYTON SMITH, trustee,
vs.
KNOX, BOGGS & Co., ROBERT J. CHESTER and PROBERT P. COLLIER.

Be it remembered, that this cause came on to be heard on this, the tenth day of November, eighteen hundred and forty-one, before the Hon. A. McCampbell, chancellor, upon the orders *pro confesso* against said defendants. And it appearing to the satisfaction of the court, that in March, eighteen hundred and thirty-nine, defendant Collier made a deed conveying to complainant, amongst other things, the following negro slaves, to wit: Jack, Jim, Washington, Margaret, Doll, Marcella, Zilpha, Bryan, Toney, Catherine, Cully, Chloe, Phillis, Sam, John, Lucinda, and Cynthia; which said deed was executed by said Collier to complainant in trust to secure the payment of certain debts in the same specified; and by the terms of said deed, said Collier was to remain in possession of the property conveyed in the same for the space of eighteen months, from and after the execution of said deed; and in the event that the debts, specified in said deed, were not paid on or before the expiration of the eighteen months from the time of the execution of said deed, the property specified in the same was to be sold by complainant, and the proceeds arising from said sale to be applied by him to the liquidation and settlement of the debts set forth in said deed.

And it further appearing, that said deed was duly proven and registered, and that the debts specified in said deed are *bona fide*, and due and owing, with the exception of about five hundred dollars, which has been paid by said Collier since the execution of said deed; and that said deed was executed in good faith, and there is no fraud in the same.

And it further appearing to the satisfaction of the court, that after the execution, probate, and registration of said deed, defendants, Knox, Boggs & Co., recovered a judgment in the district court of the United States, in the 8th circuit, for the State of Tennessee, at Jackson, for about the sum of three thousand four hundred and sixty-two dollars and twenty cents; upon which said judgment, a writ of *fieri facias* issued to defendant Chester; who, by virtue of said writ of *fieri facias*, seized and took into his possession said negro slaves, Jack, Jim, Washington, Doll, Marcella, Zilpha, Bryant, Toney, Catharine, Cully, Chloe, Phillis, Cynthia, Sam, John, and Lucinda, and that defendant Chester was about to sell and dispose of said negroes slaves.

And it further appearing to the satisfaction of the court, that defendants acquired no lien on any of said several negroes slaves by virtue of their said judgment and execution; and that said slaves ought not to be appropriated in satisfaction of the same.

It is therefore ordered, adjudged, and decreed by the court, that the injunction heretofore awarded in this cause, be made perpetual; and that said defendants, Knox, Boggs & Co., and said Robert J. Chester be, and are hereby, restrained perpetually from selling or otherwise controlling either of said slaves under and by virtue of said judgment and execution.

It is further ordered, that the sheriff of Tipton county deliver said negroes over to complainant; that complainant pay all costs herein expended, for which execution may issue. And that complainant recover of defendants Knox, Boggs & Co., and Robert J. Chester, the costs of suit herein expended; and that defendant Collier recover of complainant the cost by him about this suit expended; for which executions may issue.

STATE OF TENNESSEE:

I, Sheppard M. Ashe, clerk and master of the chancery court at Brownsville, for the district composed of the counties of Haywood, Tipton, and Lauderdale, in the State aforesaid, do certify, that the foregoing is a true, perfect, and correct copy of the decree of said court, made at its November term, 1841, in a suit therein pending, wherein Peyton Smith, trustee, &c., was complainant, and Knox, Boggs & Co., Robert J. Chester, and Probert P. Collier, were defendants.

Given under my hand and private seal, there being no seal of office, this 10th day of October, A. D. 1842.

SHEPPARD M. ASHE, [SEAL.]
Clerk and master, &c.

Final decree.—Decree.

And now, on this the 16th day of October, 1843, the following final decree was made in this cause, to wit:

JOHN KNOX, JAMES BOGGS, and JAMES A. KNOX,
vs.
PEYTON SMITH, THOMAS ECKFORD, PROBERT P. COLLIER, NEEDHAM BRYAN, HENRY FEEZOR, FREDERIC R. SMITH, JOSEPH G. BOON, and JOSIAH HORNE. } In chancery.

On the 14th day of October, 1843, this cause came on to be heard on bill, answers, replication, and proof, and in presence of counsel for both parties. Whereupon, it was ordered, adjudged, and decreed by the court, that the bill be dismissed; and that the defendants recover of the complainants their costs in this behalf expended; for which execution shall issue as at law.

And thereupon, the complainants, by their counsel, move the court for leave to appeal to the Supreme Court of the United States, to be held at Washington city, in the District of Columbia, upon entering into bond with security, for the prosecution of such appeal, within sixty days from this time; which is granted, provided said bond and security be given, and not otherwise.

And afterwards, on the 20th day of November, 1843, and within sixty days from the date of the order aforesaid, the complainants executed the following

Appeal bond.—Bond.

UNITED STATES OF AMERICA, *sct:*

Know all men by these presents, that we, John Knox, James Boggs, and James A. Boggs, and Robert C. Brinkley, are held and firmly bound unto Peyton Smith, Thomas Eckford, Probert P. Collier, Needham Bryan, Henry Feezor, Frederic R. Smith, Joseph G. Boon, and Josiah Horne, in the penal sum of two hundred and fifty dollars; for the payment whereof, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with [our] seals, and dated this twentieth (20th) day of November, 1843.

The condition of the foregoing obligation is this: That whereas, at the October term, 1843, of the circuit court of the United States, in the eighth circuit, for the district of West Tennessee, at Jackson, the said Peyton Smith et al., obtained a decree for costs of suit against the said James A. Knox et als., from which said decree the said Knox, Boggs & Co. prayed and obtained an appeal to the Supreme Court of the United States, held at Washington city, in the district of Columbia.

Now, if the said John Knox, James Boggs, and James A. Knox, shall well and truly prosecute their said appeal with effect; or, in case of failure therein, shall well and truly stand to, abide by, and perform the judgment, sentence, and decree of said Supreme Court in the premises;